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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,023	02/21/2002	Jawed Asrar	17396/09057CIP	2905
27530	7590	10/24/2005	EXAMINER	
NELSON MULLINS RILEY & SCARBOROUGH, LLP 1320 MAIN STREET, 17TH FLOOR COLUMBIA, SC 29201				CLARDY, S
ART UNIT		PAPER NUMBER		
				1617

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/081,023	ASRAR ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	S. Mark Clardy	1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 July 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2,8-17,20-29,64-85 and 99 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2,9-11, 16, 24-29 and 64-70 is/are rejected.
- 7) Claim(s) 8,12-15,17,20-23,71-85 and 99 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

Claims 2, 8-17, 20-29, 64-85, and 99 are pending in this application which is a continuation-in-part (CIP) of US Application 10/026,301, which claims benefit of US Provisional Application 60/257,502, filed December 22, 2000.

Applicants' claims are drawn to a method of increasing vigor and/or yield of plants<sup>1</sup> by treating the plant or its propagation material (claims 24-25: seeds) with a composition comprising a triazole fungicide<sup>2</sup> or a strobilurin fungicide<sup>3</sup>, wherein any fungal pathogen pressure is absent (claim 2). Additional components which may be applied along with the triazole or strobilurin fungicide include silthiofam-type fungicide (claim 8), various microbial inoculants (claims 75-76) such as *Bradyrhizobium japonicum*, and additional fungicides<sup>4</sup> (claim 77).

All claims have been examined; no claims are withdrawn.

The term "imidazolinone" has been misspelled in claims 80 and 83.

The indicated allowability of claims 2, 8-10, 20-29, 64-67, 69, 71, 73, 79, 80, 84, 85, and 99 is withdrawn in view of the newly discovered reference to Gatineau et al. Rejections based on the newly cited reference(s) follow.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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<sup>1</sup> See list of crop plants in claim 28 and claims 64-69; corn is in claim 29, soybeans in claim 69, transgenic herbicide (e.g., glyphosate, claim 85) resistant plants in claims 79-81.

<sup>2</sup> See list in claim 10; claims 11-17: fluquinconazole, simeconazole, tebuconazole, tetriconazole, triticonazole, 1-(4-fluorophenyl)-2-(1H-1,2,4-triazole-1-yl)ethanone.

<sup>3</sup> Claims 21-22, 99: azoxystrobin, dimoxystrobin, famoxadone, kresoxim-methyl, metominostrobin, picoxystrobin, pyraclostrobin, trifloxystrobin

<sup>4</sup> Claim 77: fludioxonil, fluquinconazole, difenoconazole, captan, metalaxyl, carboxin, thiram

Claims 2, 9-11, 16, 24-29, and 64-70 are rejected under 35 U.S.C. 102(a) and (b) as being anticipated by Gatineau et al (EP 0 622 020).

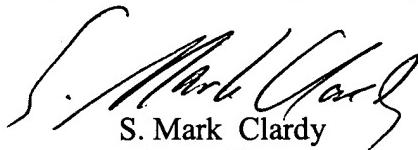
Gatineau et al teach the utility of triticonazole (p. 6, lines 26-28) as an agent for improving the health of plants, helping to shorten plant stems, promoting resistance to lodging, increasing nitrogen uptake from the soil, and reducing the amount of nitrogen needed to be supplied in the form of fertilizer (p. 2), by applying the active agent to seed (abstract), including corn, barley, rye, rice, and soybean at rates from 0.2 – 1000 g/100 kg seed (p. 4, lines 40-48; “0,1 à 500 g de matière active par quintal de graine”; 1 quintal = 50 kg).

Claims 8, 12-17, 20-23, 71-85 and 99 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Mark Clardy  
Primary Examiner  
Art Unit 1617

October 19, 2005